IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.673 OF 2006

WITH

CIVIL APPLICATION NO.905 OF 2006

Beena Anil Parekh ...Appellant

Versus

Sakhubai Soma Bhavar & Ors. ...Respondents

.....

Mr.Pankaj S.Shah for Appellant.

Mr.Milind Vasudeo with Ms.Priya Ranade i/b Beri & Co. for Respondents 13 to 17.

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**CORAM: A.M.KHANWILKAR, J.**

**JANUARY 23, 2007.**

**P.C.**

1. This Appeal takes exception to the Judgment and Order passed by the City Civil Court, Greater Bombay dated August 23, 2006 in S.C.Suit No.6401 of 1992. By this Judgment and Order, the Trial Court addressed itself to the preliminary issue as to whether the Suit as filed by the Appellant/Plaintiff is properly valued and for the purpose of Court fee and jurisdiction. The Trial

Court, after analysing the averments and the relief clause in the Plaint, opined that the Plaint was ingeniously drafted. The reliefs claimed by the Plaintiff were in the nature of specific performance of the Agreement itself, which claim has to be governed by Article VII of the Bombay Court Fees Act and not under Section 6(iv)(j). On that reasoning, the Court passed the following order:

> "Issue No.2 is answered in the negative holding that suit is not properly valued. I grant time if one month to the Plaintiff for carrying out necessary amendment in the clauses of valuation and pay the court fees and/or to bring stay order from the Appellant Court. Adjd. to 25/9/2006. C.C.Expedited."

2. The correctness of this decision is put in issue in the present Appeal. On analysing the averments in the Plaint, in particular, Paragraphs 12, 14 and 16 and reading the Plaint as a whole, I am in agreement with the view taken by the Trial Court that although the relief claimed in the Suit is one of declaration that Memorandum of Understanding dated 29th February 1992 was valid, subsisting and binding on the Defendants but in substance it was in the nature of seeking relief of

specific performance against the Defendants.

3. Thus understood, I have no difficulty in affirming the view taken by the Trial Court that in such a case the Suit will be governed by Article VII of the Bombay Court Fees Act and not by Section 6(iv)(j). This Appeal therefore should fail. The same is dismissed.

4. At this stage, Counsel for the Appellant prays that the Appellant be permitted to withdraw the Suit pending before the City Civil Court and present it before the Court of competent jurisdiction and file fresh Suit for such relief as may be advised and permissible by law to the Plaintiffs.

5. Such request be made before the Trial Court, who in turn, shall consider the same on its own merits, uninfluenced by the observations in the impugned Judgment or for that matter, present order.

6. In view of the above order, Civil Application stands disposed of.

A.M.KHANWILKAR, J.